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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 THE ESTATE OF BARRY ISOM, by and
8 through its Executrix, Mary Love-Isom;
9 Jaime Isom Newberry and Kimberly Isom
Grindstaff,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA,
13 Defendants.
14

Case No. 2:14-cv-00475-RFB-VCF

ORDER

**Findings of Fact and Conclusions of Law
After Court Trial**

15 **I. INTRODUCTION**

16 This case involves an automobile accident that caused the death of the Plaintiff, Barry
17 Isom ("Isom"). The decedent's family seeks damages for negligence and wrongful death. The
18 Court held a bench trial in this case from September 11, 2017 to September 22, 2017. The Court
19 rules in favor of the Plaintiffs based on the following findings of fact and conclusions of law.
20

21 **II. BACKGROUND**

22 The parties agree that on April 9, 2012, Vanessa Van Zerr ("Van Zerr"), an employee of
23 the United States Geological Survey ("USGS") at the time, was driving a 2011 silver Chevrolet
24 Tahoe ("Tahoe") northbound on US 93 to track desert tortoises in the Coyote Springs area. Isom
25 was riding his 2002 Harley Davidson motorcycle northbound on US 93 at the same time. Isom's
26 motorcycle collided with the Tahoe on US 93 after Van Zerr attempted to make a left turn across
27 the southbound lane of US 93. Isom struck the right rear of the Tahoe and was ejected from his
28 motorcycle. Isom subsequently died from his injuries.

1 The parties disagree as to whether Van Zerr was negligent, whether Isom was
2 contributorily negligent, whether Isom was conscious after impact for any amount of time, and
3 the appropriate amount of damages.

4 5 **III. JURISDICTION AND VENUE**

6 This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 for claims
7 arising under the Federal Tort Claims Act, 28 U.S.C. § 1346(b). Venue is proper because the
8 underlying actions and corresponding damages occurred within Clark County, Nevada.

9 10 **IV. FINDINGS OF FACT**

11 Federal Rule of Civil Procedure 52(a)(1) requires the Court to “find the facts specially
12 and state its conclusions of law separately.” Fed. R. Civ. P. 52(a)(1). The court must state
13 findings sufficient to indicate the factual basis for its ultimate conclusion. Kelley v. Everglades
14 Drainage District, 319 U.S. 415, 422 (1943). The findings must be “explicit enough to give the
15 appellate court a clear understanding of the basis of the trial court's decision, and to enable it to
16 determine the ground on which the trial court reached its decision.” United States v. Alpine Land
17 & Reservoir Co., 697 F.2d 851, 856 (9th Cir.), cert. denied, 464 U.S. 863 (1983) (citations
18 omitted). Accordingly, following the bench trial and having reviewed all of the evidence and
19 observed all of the witnesses, the Court makes the following findings of fact in this case.

- 20 1. On April 9, 2012, Vanessa Van Zerr (“Van Zerr”), an employee of the United States
21 Geological Survey (“USGS”) at the time, was driving a 2011 silver Chevrolet Tahoe
22 (“Tahoe”), USGS vehicle, northbound on US 93 to track desert tortoises in the Coyote
23 Springs area.
- 24 2. Irini (Renee) Lamkin (“Lamkin”), USGS intern at the time, was sitting in the front
25 passenger seat of the Tahoe. Nelson Lau (“Lau”), USGS intern at the time, was sitting in
26 the right rear passenger seat of the Tahoe.
- 27 3. Isom was riding his 2002 Harley Davidson motorcycle northbound on US 93 at the same
28 time. He was riding in the northbound lane far behind the Tahoe.

- 1 4. As Van Zerr approached the dirt access road to the field site, she pulled off to the right on
2 the shoulder to allow traffic immediately behind her to pass. The area where she pulled
3 over was not a designated area for highway traffic to pull over and there was no lane or
4 paved asphalt where she pulled over.
- 5 5. Van Zerr pulled the Tahoe completely off of the road while waiting for traffic to pass,
6 with all four wheels on the sloped partially dirt and gravel shoulder. Van Zerr's vision
7 was impaired by the angle of the vehicle in this position.
- 8 6. Van Zerr observed Isom approaching in the distance on his motorcycle, but failed to
9 properly account for his distance and the speed at which he was approaching. She knew
10 the speed limit for the highway was between 60 and 70 miles per hour. She reentered the
11 highway without letting Isom pass, although she did not have sufficient time to do so.
- 12 7. Van Zerr reentered the highway at an unreasonably slow speed, approximately ten miles
13 per hour. She did not put on her indicator signal to reenter the highway, so Isom did not
14 have notice that the Tahoe was about to reenter the highway until it actually did so.
- 15 8. Approximately 20 feet after reentering the northbound lane of the road, Van Zerr began
16 to maneuver the Tahoe to execute a left turn, but she did not make a direct or sharp turn.
17 Rather than making a sharp, 90-degree turn across the southbound lane, Van Zerr first
18 maneuvered the Tahoe from the northbound to the southbound lane at a slight angle, such
19 that the rear right side of the Tahoe was exposed to northbound traffic, a few feet into the
20 southbound lane, when Isom's motorcycle collided with the Tahoe.
- 21 9. Because of the speed and angle at which Van Zerr executed the left turn, Isom initially
22 did not realize that the Tahoe intended to move into and then turn all the way across the
23 southbound lane. Isom angled his motorcycle into the southbound lane because he
24 intended to pass the Tahoe on the left side rather than risk a sudden brake while traveling
25 at highway speed.
- 26 10. Van Zerr did not provide at least 300 feet of continual notice of her intent to execute a
27 left turn before she turned left across highway US 93 in front of Isom and she was driving
28 at an unsafely slow speed on the highway.

- 1 11. Van Zerr maneuvered the Tahoe into the southbound lane without activating her turn
2 signal to indicate her intention to turn and without initially beginning her turn. By the
3 time the Tahoe was completely pulled into the southbound lane, Isom did not have time
4 to safely readjust his course.
- 5 12. Through no fault of his own, Isom struck the rear right side of the Tahoe and was ejected
6 from his motorcycle. He landed on the road several feet from the site of the collision.
- 7 13. Isom suffered severe head trauma and bodily injuries as a result of the collision. He was
8 bleeding from his head injuries in his helmet and his body appeared immobile.
- 9 14. Isom was conscious, but unable to communicate, for a brief but significant period of time
10 after impact, approximately 20 – 35 minutes, until he lost consciousness and then
11 ultimately expired from his injuries. During the period of consciousness, Isom would
12 have been aware of the seriousness of his injuries and his impending death creating
13 significant pain and suffering for the last moments of his life.
- 14 15. Based on the testimony of experts and all other evidence received, Isom had an additional
15 life expectancy of approximately 8 to 10 years. While Isom had health issues that could
16 impact his life expectancy, the Court finds this to be a reasonably accurate determination
17 of the additional life expectancy.
- 18 16. Mary Love-Isom met the decedent in 2004. After dating for eighteen months, the two
19 were married in 2006. They had a strong relationship and spent a considerable amount of
20 time together during their six-year marriage, including going on trips together, enjoying
21 mutual hobbies, and tending to their financial needs and family obligations.
- 22 17. Jaimee Isom Newberry and Kimberlee Isom Grindstaff were the decedent's daughters.
23 Jaimee Isom Newberry is forty-two years old and Kimberlee Isom Grindstaff is thirty-
24 eight years old. The decedent had ongoing and deep relationships with both of his
25 daughters and continued to provide them with support both in person and through
26 communication until the day of his death. He provided significant emotional and other
27 support to his daughters who had both recently experienced significant personal
28 challenges. Jaimee Isom Newberry went through a divorce from 2009-2010, during

1 which time her father provided her with a great deal of comfort, and Kimberlee Isom
2 Grindstaff was in the process of going through a divorce when her father passed. Both of
3 the decedent's daughters have children the decedent had relationships with as well and
4 who no longer have a grandfather.

5 6 **V. CONCLUSIONS OF LAW**

7 **A. Negligence**

8 In Nevada, "to prevail on a negligence claim, a plaintiff must establish four elements: (1)
9 the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages."
10 Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc., 221 P.3d 1276, 1280 (Nev. 2009). Negligence
11 *per se* establishes the duty and breach elements of a negligence claim, "if the injured party
12 belongs to the class of persons that the statute was intended to protect, and the injury is of the
13 *type* against which the statute was intended to protect." Ashwood v. Clark County, 930 P.2d 740,
14 743-44 (Nev. 1997) (internal citation omitted) (emphasis in original). There are two Nevada
15 traffic statutes applicable to this case. "A driver shall not turn a vehicle from a direct course upon
16 a highway unless and until such movement can be made with reasonable safety, and then only
17 after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by
18 such movement and after giving an appropriate signal if any other vehicle may be affected by
19 such movement." NRS 484B.413(1). "A signal of intention to turn right or left, or otherwise turn
20 a vehicle from a direct course, shall be given continuously during not less than the last 100 feet
21 traveled in a business or residential district and not less than the last 300 feet traveled in any
22 other area prior to changing the course of a vehicle. This rule shall be observed, regardless of the
23 weather." NRS 484B.413(2).

24 The Court finds that Van Zerr violated both of these two traffic statutes. Van Zerr turned
25 her vehicle from a direct course upon the highway at a time when the movement could not be
26 made with reasonable safety and without giving an appropriate signal. Van Zerr did not signal
27 her intention to turn left for 300 continuous feet before turning across the highway. As a fellow
28 motorist traveling on the same highway, Isom was in the class of persons these statutes were

1 intended to protect. Isom's injuries and death were directly caused by his impact with the Tahoe
2 in the course of the unsafe turn and these injuries and death are the type of injury the statutes are
3 intended to prevent. Van Zerr was not excused from following these traffic laws, as it was not
4 reasonable or safe for her to violate them in this context. Isom did not engage in any conduct that
5 contributed to the accident. Therefore, the Court finds that Plaintiffs have established negligence
6 per se and the elements of duty and breach.

7 Plaintiffs contend that Van Zerr also violated the requirement that "[t]he driver of a
8 vehicle about to enter or exit a controlled-access highway shall yield the right-of-way to all
9 vehicles approaching on the highway whose proximity constitutes an immediate hazard and shall
10 continue to yield the right-of-way to that traffic until the driver may proceed with reasonable
11 safety." NRS 484B.263. Based on the evidence, the Court does not find that the stretch of US 93
12 where the accident occurred is a controlled-access highway, and so this statute does not apply.
13 However, the Court finds that Van Zerr nonetheless owed a duty of care to the other motorists on
14 the highway to reenter the highway safely, and she breached that duty of care. Van Zerr acted
15 negligently when she failed to wait until there was a safe distance between the Tahoe and the
16 following traffic before reentering the highway. She was also negligent in executing the left turn
17 in the manner in which she did. She entered the highway at an unsafely slow speed and then did
18 not provide an indication of her intent to turn or execute the turn in a safe manner. Her actions
19 prevented Isom from being able to safely maneuver his vehicle around the Tahoe.

20 The Court further finds that Van Zerr's negligent actions were the cause-in-fact and
21 proximate cause of Isom's injuries and death, as the impact between the motorcycle and the
22 Tahoe was a foreseeable result of Van Zerr's negligent driving.

23 24 **B. Wrongful Death**

25 Under Nevada law, "[w]hen the death of any person... is caused by the wrongful act or
26 neglect of another, the heirs of the decedent and the personal representatives of the decedent may
27 each maintain an action for damages against the person who caused the death ..." NRS 41.085(2).
28 Heirs in a wrongful death suit are entitled to recover "pecuniary damages for the person's grief

1 or sorrow, loss of probable support, companionship, society, comfort and consortium, and
2 damages for pain, suffering or disfigurement of the decedent.” NRS 41.085(4). The personal
3 representative of the decedent’s estate is entitled to recover special damages, including funeral
4 expenses. NRS 41.085(5)(a). As stated above, the Court finds that Van Zerr’s negligent conduct
5 caused Isom’s death. The Plaintiffs in this case are the heirs and personal representative of the
6 decedent. As such, they are entitled to recover under the Nevada wrongful death statute.

7 8 **C. Federal Tort Claims Act**

9 Under the Federal Tort Claims Act (“FTCA”), the United States shall be liable for money
10 damages “in the same manner and to the same extent as a private individual under like
11 circumstances.” 28 U.S.C. § 2674 (2010). When a government employee acting in the scope and
12 course of her employment causes the death of another through her negligence, wrongful acts or
13 omissions, the United States is liable therefor. 28 U.S.C. § 1346(b). The Court finds that Van
14 Zerr was acting in the scope of her employment with the USGA when her negligence caused
15 Isom’s death. She was performing work for the USGS in a USGS vehicle. Therefore, the United
16 States shall be liable for the damages accrued in this case under Nevada law.

17 18 **D. Damages**

19 **i. Loss of Support**

20 Under the Nevada wrongful death statute, the decedent’s heirs are entitled to recover
21 damages for “loss of probable support.” NRS 41.085(4). “This element of damages translates
22 into, and is often measured by, the decedent’s lost economic opportunity.” Alsenz v. Clark Cty.
23 Sch. Dist., 864 P.2d 285, 287 (1993). The Court finds that Isom’s additional life expectancy was
24 8 to 10 years. This finding is based upon the Court’s review of the various experts’ reports and
25 the Court’s assessment of the credibility of their findings. These experts recognized that there
26 was and could be a range of years for life expectancy for Isom, considering various individual
27 facts about his health and lifestyle. The Court further finds that Plaintiffs are entitled to \$345,00
28 total in economic damages for loss of probable support based on this life expectancy and Isom’s

1 earning potential. This calculation is based upon a review of the experts' various economic
2 projections and factoring in the Court's determination of which of the factors presented by the
3 experts were more persuasive and thorough.

4 **ii. Loss of Companionship**

5 Under the Nevada wrongful death statute, the decedent's heirs are entitled to recover
6 damages for their "grief or sorrow" and for the loss of "companionship, society, comfort and
7 consortium." NRS 41.085(4). The Court received significant and compelling testimony about
8 Isom's involvement in the life of his family. The Court finds that he represented a significant and
9 ongoing source of emotional and other support for his family, especially his two daughters. The
10 Court further finds that he continued to provide significant and ongoing support to his family up
11 to the moment of his death. To an extraordinary degree beyond simply being a father and
12 husband, he was an unusually central emotional support figure in his family. Based on the
13 testimony of the Plaintiffs at trial and the significant hardship this loss has caused them,
14 the Court will award them non-economic damages as follows: Mary Love-Isom – \$550,000;
15 Jaimee Isom Newberry – \$650,000; Kimberlee Isom Grindstaff – \$650,000.

16 **iii. Pain and Suffering**

17 Under the Nevada wrongful death statute, the decedent's heirs are entitled to recover
18 "damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4). In order to
19 recover damages for pain and suffering, the beneficiary must show by a preponderance of the
20 evidence "that the decedent was conscious for at least some period of time after he suffered the
21 injuries which resulted in his death." F/V Carolyn Jean, Inc. v. Schmitt, 73 F.3d 884, 885 (9th
22 Cir. 1995) (quoting Cook v. Ross Island Sand & Gravel Co., 626 F.2d 746, 749-50 (9th Cir.
23 1980). The Court finds that Isom was conscious, although unable to verbally communicate, for a
24 brief period of time after the accident, before his injuries rendered him unconscious.
25 Importantly, during the period of time that he was conscious, the Court finds that he would have
26 been aware of the extent and severity of his injuries and his impending death. The Court finds
27 that he would have suffered significant pain and suffering in these last moments of his life – both
28 physical and emotional. Therefore, the Court finds it appropriate to award damages for pain and

1 suffering as follows: Mary Love-Isom - \$250,000; Jaimee Isom Newberry - \$250,000; Kimberlee
2 Isom Granstaff - \$250,000.

3 **iv. Special Damages**

4 Under the Nevada Wrongful Death Statute, the representative of a decedent's estate may
5 recover "[a]ny special damages, such as medical expenses, which the decedent incurred or
6 sustained before the decedent's death, and funeral expenses." NRS 41.085(5)(a). As the
7 representative of the decedent's estate, Mary Love-Isom is entitled to special damages for funeral
8 expenses and property damage in the amount of \$10,045 - on behalf of the decedent's estate.

9
10 **VI. JUDGMENT**

11 The Court finds in favor of the Plaintiffs. The Court awards the Plaintiffs \$345,000 total
12 in economic damages for loss of probable support. The Court awards non-economic damages
13 for loss of companionship as follows: Mary Love-Isom – \$550,000; Jaimee Isom
14 Newberry – \$650,000; Kimberlee Isom Grindstaff – \$650,000. The Court awards the Plaintiffs
15 non-economic damages for pain and suffering as follows: Mary Love-Isom – \$250,000; Jaimee
16 Isom Newberry – \$250,000; Kimberlee Isom Grindstaff – \$250,000. As the representative of
17 the decedent's estate, the Court awards Mary Love-Isom \$10,045 in special damages for funeral
18 expenses and property damage, on behalf of the decedent's estate.

19
20 **IT IS ORDERED** that the Clerk of Court shall enter judgment for the Plaintiffs and
21 close this case.

22 **IT IS FURTHER ORDERED** that Motions [111, 130, 133 and 140] are GRANTED
23 and Motion [136] is DENIED as moot given the Court's rulings at the trial.

24
25 DATED this 31st day of December, 2017.

26 

27 **RICHARD F. BOULWARE, II**
28 **UNITED STATES DISTRICT JUDGE**